

NTSB Order No. EA-4979

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of June, 2002

Respondent .

OPINION AND ORDER

¹The initial decision, an excerpt from the hearing transcript, is attached.

deny the appeal.

In the order of suspension, filed as the complaint, the Administrator alleged that respondent on several occasions operated a Bell 206 B helicopter while carrying passengers for compensation or hire, without an air carrier certificate or proper operations specifications, and without complying with the competency check requirements of Part 135 of the Federal Aviation Regulations (FAR).² The law judge affirmed the order, specifically finding that respondent, a former Part 135 operator, did, in fact, conduct several passenger-carrying flights for compensation or hire, as a direct air carrier, when he did not have an air carrier certificate and that, by knowingly doing so, he operated the aircraft in a reckless manner.

The underlying facts are set forth in sufficient detail in the initial decision and need not be repeated here, especially since respondent's appeal is confined to narrow, procedural issues. His main arguments on appeal are that the law judge erred by refusing to grant his request for a continuance, thereby denying him due process, and that he was prejudiced because the Administrator did not call all the witnesses she had noticed.³

²The Administrator alleged violations of the following sections of the Federal Aviation Regulations (FAR): 119.25(b); 119.33(a)(2)-(3); 119.5(g); 135.293(a)(1)-(8); 135.293(b); 135.299(a)(1)-(3); 135.3(a)(1); and 91.13(a).

³He also claims that some answers to interrogatories he received from the Administrator were inconsistent with testimony given by an FAA inspector and that it somehow prejudiced his case. This argument is without merit. First, he does not explain how his case is prejudiced. Second, the alleged inconsistencies are about whether respondent authorized the

We find his contentions unavailing.

Respondent claims that the law judge erred by refusing to grant his request for a continuance, made on May 4, 2001, four days before the scheduled hearing date. The continuance was vital for the adequate preparation of his case, he asserts, because he did not receive the Administrator's response to his discovery request until April 3, 2001, and thus was delayed in his effort to hire a private detective to review and follow up on the information. This argument is unpersuasive.

Respondent received the Notice of Proposed Certificate Action on October 18, 2000, and, therefore, was aware of the nature of the charges against him at that time, yet did not hire a private detective until May 1 or 2, 2001.⁴ Transcript (Tr.) at 174. Further, he never filed a motion to compel discovery. Instead, he waited until four days before the hearing to request

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website for Innovative Air, the name of respondent's alleged air charter company. Counsel made the law judge aware of the inconsistencies at hearing. The Administrator did not reference the maintenance of the website in the complaint and the law judge did not discuss it in his initial decision.

As for respondent's claims regarding the Best Evidence Rule, they are, quite simply, flawed. The Federal Rules of Evidence are instructive, not binding, on Board proceedings and there is no prohibition on the introduction into evidence of photocopies. Again, respondent raised the issue at hearing and the law judge presumably took the matter into consideration during his deliberations.

We have considered all other arguments raised by respondent and conclude they are without merit.

⁴In addition, counsel for the Administrator filed his request for witness subpoenas on March 13, 2001, so respondent knew at that time the names of the Administrator's potential

a continuance. The law judge was well within his discretion to deny the request, especially considering respondent's failure to make good use of his time. See Administrator v. Aarvik, NTSB Order No. EA-4640 at 2, n.3 (1998)(decision on whether to grant motion for continuance is matter committed to law judge's discretion).

Respondent also protests that he was unfairly surprised when the Administrator chose not to call several people on her subpoena list, claiming that they may have provided exculpatory information. He raised this concern to the judge at hearing. Counsel for the Administrator then explained to the law judge's satisfaction that he determined the testimony would have added nothing to his case and, further, that he was unaware of any exculpatory information possessed by those potential witnesses. We see no error arising from this situation. Respondent was responsible for securing the appearance of the witnesses he wished to testify. See Administrator v. Grantham, NTSB Order No. EA-4287 at 3-4 (1994); Administrator v. Wang, NTSB Order No. EA-3719 at 9, n.10 (1992). That he chose not to ask the law judge for witness subpoenas in advance of the hearing was a tactical decision respondent was free to make.⁵

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witnesses.

⁵Respondent's counsel stated in his closing argument that if he had more time, he would have sent subpoenas to the three witnesses. Tr. at 206.

William Bell, a private detective, was respondent's only witness. Respondent did not testify and presented very little

In sum, we find that the law judge's decision is supported by the evidence and that respondent has identified no error warranting a reversal of that decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 270-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.⁶

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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evidence at the hearing. Despite his general protestations of being denied adequate time to prepare for hearing, he fails to show how he in fact was prejudiced by events not of his own making, and proffers no actual evidence he would have introduced had he been allotted more time for preparation.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).